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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,238

09/24/2003

Dean W. Creighton

6123US

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7590

07/12/2007

GENERAL MILLS, INC.

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

07/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/669,238

**Applicant(s)**

CREIGHTON ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Lengerich et al ( 6149965) in view of Sander ( 6242033).

Van Lengerich et al disclose cooked cereal doughs, RTE cereal and method of making them. The cereal dough comprises starchy cereal components in amount of 40-99%, about 1-10 inulin, additional source of soluble fiber in amount of .1-6%, about 1-50% cereal bran fraction such as oat bran, wheat bran and additives such as sweetener in amount of .1-20%, .1-2% salt, vitamins, colors, flavors, high potency sweeteners etc... Possible supplemental soluble fiber source include high methoxyl pectin, cellulose flour, cellulose fiber. The inulin has an average DP of 9-10. Other B-2 fructofuransose material can also be includes. The flours can be whole flours or flour fractions and the cereal includes wheat, rice, corn, oat etc.. The dough comprises about 10-55% moisture. The inulin material can be added to the dry materials that are cooked or can be added subsequent to the formation of a cooked dough. The method of making the cereal comprises the steps of forming the cereal dough, forming the dough into individual pieces, and drying the pieces . The pellets can be partially dried to moisture content of 18-20% to form wet flakes having thickness of .015-.025 inch. The wet flakes can then be subjected to finish drying to a moisture content of 1-4%. The flakes are dried by toasting. The inulin can be worked into the dough in a pellet-forming device. The cereal pieces can be coated with sugar coating. The fat content of the cereal is less than 2%. Part of the inulin can be topically applied to form a topical coating. Then cereal contains up to about 3g/oz of fiber inulin. The pieces or pellets

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can be deep fat fried to form dried puffed fried product. ( see columns 2-9 and the examples).

Van Lengerich et al do not disclose adding a plant protein in the amount claimed and the type of protein claimed, the particle size of the cereal bran as claimed, the thickness of the flakes as claimed, the fiber is carboxymethyl cellulose and the high potency sweetener as claimed.

Sander discloses a high protein cereal. The cereal has a minimum protein of 20%. The protein sources include soy protein, corn zein, protein from any recognized cereal sources and mixtures thereof. ( see col. 2 lines 43-50)

It would have been obvious to one skilled in the art to add protein to the van Lengerich et al cereal as taught by Sander to make a high protein cereal to enhance the nutritional profile of the product. It would have been obvious to add protein in the amount taught by Sander or less depending on the nutrition desired. The proper amount can readily be determined through routine experimentation to obtain the most optimum product with respect to taste and nutrition. The type of protein selected would have been an obvious matter of preference depending on the taste, flavor and concentration of protein desired. It would have been obvious to one skilled in the art to determine the appropriate fiber size to give optimum texture. The size selected is an effective-result variable which would have within the determination of one in the art. It would have been obvious to use high potency sweetener to reduce the caloric content of the product. All the sweetener claimed are well known, it would have been obvious to one skilled in the art to select any known high potency sweetener. It would have been

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to make flakes in any desired thickness depending on the texture and crunchiness desired. Van Lengerich et al disclose cellulose fiber; thus, it would have been obvious to select any known cellulose and carboxymethyl cellulose is well known. The amounts of soluble and insoluble fiber fall within the ranges claimed; thus, it is obvious the ratio falls within the range claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 25, 2007

  
LIEN TRAN  
PRIMARY EXAMINER

Group 1700